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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 **JEREMY HOWELL,**

12 **Plaintiff,**

13 **v.**

14 **NANCY A. BERRYHILL,**
15 **Acting Commissioner of Social**
16 **Security,**

17 **Defendant.**

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) **Case No. CV 16-388 AJW**
)

) **MEMORANDUM OF DECISION**
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19 Plaintiff seeks reversal of the decision of defendant, the Acting Commissioner of Social Security (the
20 “Commissioner”), denying plaintiff’s applications for supplemental security income and disability insurance
21 benefits. The parties have filed a Joint Stipulation (“JS”) setting forth their respective contentions.

22 **Administrative Proceedings**

23 The procedural facts are undisputed and are summarized in the Joint Stipulation. [See JS 2]. On
24 March 1, 2012, plaintiff filed his benefits applications alleging that he had been disabled since January 1,
25 2009. [See Administrative Record (“AR”) 11]. In a July 16, 2014 written hearing decision that constitutes
26 the Commissioner’s final decision in this matter, the Administrative Law Judge (“ALJ”) found that plaintiff
27 could not perform his past relevant work, but that he retained the residual functional capacity (“RFC”) to
28 perform alternative work available in significant numbers in the local and national economy. [AR 22-23].

1 Accordingly, the ALJ found plaintiff not disabled at any time from April 12, 2011 through the date of the
2 ALJ's decision.¹ [AR 23].

3 **Standard of Review**

4 The Commissioner's denial of benefits should be disturbed only if it is not supported by substantial
5 evidence or is based on legal error. Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015); Thomas
6 v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). "Substantial evidence" means "more than a mere scintilla,
7 but less than a preponderance." Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). It is "such
8 relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Burch v.
9 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). The court is required to review the record as a whole and to
10 consider evidence detracting from the decision as well as evidence supporting the decision. Robbins v. Soc.
11 Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006); Verduzco v. Apfel, 188 F.3d 1087, 1089 (9th Cir. 1999).
12 "Where the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ's
13 decision, the ALJ's conclusion must be upheld." Thomas, 278 F.3d at 954 (citing Morgan v. Comm'r of Soc.
14 Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999)).

15 **Discussion**

16 **Medical opinion evidence**

17 Plaintiff contends that the ALJ impermissibly rejected the controverted opinion of examining
18 psychologist Lance Portnoff, Ph.D. [JS 3].

19 In general, "[t]he opinions of treating doctors should be given more weight than the opinions of
20 doctors who do not treat the claimant." Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (citing Reddick

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23 ¹ Plaintiff filed prior applications for disability insurance benefits and SSI benefits on April
24 11, 2011. Those applications were denied on reconsideration, and plaintiff did not timely appeal.
25 Therefore, the ALJ applied res judicata and declined to reopen those applications or to reconsider
26 the issue of plaintiff's disability through April 11, 2011. [AR 11]. Plaintiff does not challenge the
27 application of res judicata and the decision not to reopen her prior applications, which is not subject
28 to judicial review in any event. See Lester v. Chater, 81 F.3d 821, 827 (9th Cir. 1995) (holding that
the Commissioner properly applied res judicata to bar reconsideration of a period for which a prior,
final determination had been made by declining to reopen the prior application); see also Udd v.
Massanari, 245 F.3d 1096, 1098-1099 (9th Cir. 2001) ("A decision not to reopen a prior, final
benefits decision is discretionary and ordinarily does not constitute a final decision; therefore, it is
not subject to judicial review.") (citing Califano v. Saunders, 430 U.S. 99, 107-109 (1977)).

1 v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)); see Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir.
2 2001). An examining physician's opinion, in turn, generally is afforded more weight than a non-examining
3 physician's opinion. Orn, 495 F.3d at 631; Lester v. Chater, 81 F.3d 821, 830-831 (9th Cir. 1995). If
4 contradicted by that of another doctor, a treating or examining source opinion may be rejected for specific
5 and legitimate reasons that are based on substantial evidence in the record. Batson v. Comm'r of Soc. Sec.
6 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Tonapetyan, 242 F.3d at 1148-1149; Lester, 81 F.3d at 830-
7 831. To reject an examining physician's opinion, the ALJ must give clear and convincing reasons.
8 Regennitter v. Comm'r of Soc. Sec. Admin., 166 F.3d 1294, 1298-1299 (9th Cir. 1999).

9 The opinion of a non-examining physician normally is entitled to less deference than that of an
10 examining and treating physician precisely because the non-examining physician does not have the
11 opportunity to conduct an independent examination and does not have a treatment relationship with the
12 claimant. See Andrews v. Shalala, 53 F.3d 1035, 1040-1041 (9th Cir. 1995). Standing alone, the opinion
13 of a non-examining physician cannot constitute substantial evidence that justifies the rejection of the opinion
14 of either an examining physician or a treating physician. Morgan, 169 F.3d at 602. However, a non-
15 examining physician's opinion, if supported by the medical record as a whole, may constitute substantial
16 evidence. Thomas, 278 F.3d at 957 ("The opinions of non-treating or non-examining physicians may also
17 serve as substantial evidence when the opinions are consistent with independent clinical findings or other
18 evidence in the record."); Tonapetyan, 242 F.3d at 1148 (explaining that the opinion of a non-examining
19 medical expert may constitute substantial evidence when it is consistent with other independent evidence
20 in the record).

21 The ALJ found that plaintiff had no severe physical impairments and severe mental impairments
22 consisting of bipolar disorder, borderline intellectual functioning, and a history of substance abuse. [AR 13].
23 The ALJ determined that plaintiff retained the RFC to perform a full range of work at all exertional levels,
24 but that he was limited to simple, routine tasks and occasional contact with the public and coworkers. [AR
25 16]. In assessing plaintiff's RFC, the ALJ said that he gave "substantial weight" to Dr. Portnoff's opinion,
26 "greatest weight" to the opinion of consultative psychiatrist Elmo Lee, M.D., and "significant" weight to
27 the opinions of the nonexamining state agency consultants, A. Franco, Psy. D., and Andres Kerns, Ph.D.
28 [AR 17-19]. Plaintiff contends that the ALJ improperly rejected Dr. Portnoff's opinion.

1 On March 5, 2011, Dr. Portnoff performed a comprehensive psychological evaluation at the
2 Commissioner's request. Dr. Portnoff elicited a history, conducted a mental status examination, and
3 administered psychological tests to measure comprehension, processing speed, memory, and perceptual
4 reasoning, among other things. [See AR 245-254]. Plaintiff "denied any history of substance abuse" but did
5 report that he had been arrested for drug-related charges and had spent time in jail. [AR 246-247].

6 Dr. Portnoff diagnosed bipolar II disorder and cognitive disorder not otherwise specified ("NOS").
7 Dr. Portnoff opined that plaintiff had moderate limitations in the ability to perform detailed and complex
8 tasks, accept instructions from supervisors, interact with coworkers and the public, complete a normal
9 workday or workweek without interruptions from a psychiatric condition, and deal with the stress
10 encountered in a competitive work environment. [AR 253-254]. Plaintiff was mildly impaired "in his ability
11 to work on a consistent basis without special or additional instruction due to problems with concentration."
12 [AR 254]. Dr. Portnoff concluded that plaintiff retained the ability to perform simple, repetitive tasks and
13 to manage his own money. [AR 253-254].

14 On July 8, 2012, Dr. Lee conducted a comprehensive psychiatric examination at the Commissioner's
15 request. Dr. Lee elicited a history and conducted a mental status examination. [AR 280-281]. Among other
16 things, plaintiff reported that he had been participating in a dual-diagnosis residential sober-living program
17 since February 2012. [AR 177-179]. Dr. Lee's diagnoses were alcohol abuse, cannabis abuse, substance
18 induced mood disorder, and bipolar disorder by history. He opined that plaintiff's "psychiatric symptoms
19 are directly related to his substance abuse history." [AR 281]. He stated that plaintiff was not capable of
20 managing his funds as a result of "his significant substance abuse issues." [AR 281]. Dr. Lee opined that
21 plaintiff could perform simple and repetitive tasks as well as detailed and complex tasks, and that plaintiff
22 could work without special or additional instructions. Dr. Lee opined that plaintiff was not limited in the
23 following work-related functional abilities and would remain so provided "he remains sober and continues
24 with his current psychiatric treatment": accepting instructions from supervisors, interacting with coworkers
25 and the public, maintaining regular attendance, and completing a normal workday and work week without
26 interruption due to his psychiatric condition. [AR 281-282].

27 In his decision, the ALJ said that he credited both doctors' opinions, giving "substantial weight" to
28 Dr. Portnoff's report and "greatest weight" to Dr. Lee's report. The ALJ said that he gave more weight to

1 Dr. Lee's findings "the record as a whole amply supports this opinion." [AR 20]. The ALJ concluded that
2 Dr. Portnoff's opinion "is supportive of" Dr. Lee's opinion, and that Dr. Lee's report was entitled to the
3 most weight because he examined plaintiff most recently and "had more of the medical evidence of record
4 available to him." [AR 20].

5 While Dr. Lee examined plaintiff sixteen months after Dr. Portnoff, Dr. Lee said he had "only the
6 list of allegations" from plaintiff's record, so the ALJ wrongly concluded that Dr. Lee's opinion was based
7 on a more complete medical record. [AR 277]. Nonetheless, the ALJ reasonably concluded that Dr. Lee's
8 opinion was supported by the record as a whole. The record does not include a treating source opinion
9 regarding plaintiff's ability to perform work-related functional activities. Both Dr. Portnoff and Dr. Lee
10 were one-time examining physicians who based their opinions on independent clinical findings. Although
11 Dr. Lee did not administer psychological tests, he had the benefit of a more accurate and complete history,
12 especially plaintiff's history of substance abuse, which Dr. Lee opined was "directly related" to plaintiff's
13 psychiatric symptoms. That aspect of Dr. Lee's opinion is broadly consistent with Dr. Portnoff's
14 observation that plaintiff's testing profile was "more than what would be expected from the
15 neuropsychology of bipolar/depressive disorder alone," and that in the absence of a specific history of "an
16 alcohol/drug encephalopathy" or learning disabilities, a diagnosis of generic cognitive disorder NOS was
17 warranted. [AR 253].

18 Furthermore, Dr. Portnoff and Dr. Lee agreed that plaintiff could perform at least simple, repetitive
19 tasks and had no more than mild limitations in his ability to work without special or additional instructions.
20 While only Dr. Portnoff assessed the additional "moderate" functional limitations in accepting instructions
21 from supervisors, interacting with coworkers and the public, completing a normal workday or work week
22 without interruptions from a psychiatric condition, and dealing with the stress of a competitive work
23 environment, the ALJ adequately captured some of those limitations by adopting the state agency medical
24 consultants' opinion that plaintiff was limited to only occasional interaction with coworkers and the public.
25 See Stubbs–Danielson v. Astrue, 539 F.3d 1169, 1171 (9th Cir. 2008) (holding that a limitation to simple,
26 routine, repetitive tasks with no interaction with the public adequately captured a physician's opinion that
27 the claimant had moderate limitations in concentration, persistence, and pace); Rodriguez v. Colvin, 2015
28 WL 1237302, at *5 (E.D. Cal. Mar. 17, 2015) (stating that a "moderate limitations in the ability to complete

1 a normal workday and work week without interruptions from psychologically-based symptom do not
2 preclude a finding of non-disability,” and holding that the ALJ adequately captured such a moderate
3 limitation in restricting the claimant to simple, repetitive tasks with no interaction with the general public
4 and no work with or around children); McLain v. Astrue, 2011 WL 2174895, at *6 (C.D. Cal. June 3, 2011)
5 (“Moderate mental functional limitations—specifically limitations in social functioning and adaptation—are
6 not per se disabling, nor do they preclude the performance of jobs that involve simple, repetitive tasks.”)
7 (citing Rogers v. Comm’r of Soc. Sec., 2011 WL 445047, at *11–*12 (E.D. Cal. Jan. 25, 2011) (holding that
8 a limitation to simple, repetitive tasks adequately accounted for moderate limitations in social functioning);
9 Koehler v. Astrue, 283 Fed. Appx. 443, 445 (9th Cir. 2008) (holding that the ALJ’s finding that the claimant
10 did not have a “severe” mental impairment was proper even though claimant had “moderate” limitation in
11 the “ability to respond to changes in the workplace setting”)).

12 As for the remaining moderate functional limitations endorsed by Dr. Portnoff, the ALJ was entitled
13 to resolve the conflict between the consultative examining source opinions by rejecting those limitations.
14 See Treichler v. Comm’r of Soc. Sec. Admin., 775 F.3d 1090, 1098 (9th Cir. 2014) (“[W]e leave it to the
15 ALJ to determine credibility, resolve conflicts in the testimony, and resolve ambiguities in the record.”);
16 Drouin v. Sullivan, 966 F.2d 1255, 1258 (9th Cir. 1992). The opinions of the state agency medical
17 consultants constituted substantial evidence supporting the ALJ’s resolution of that conflict because those
18 opinions were based a longitudinal review of the record as a whole, including the findings and conclusions
19 of both consultative examiners and plaintiff’s medical record. See Tonapetyan, 242 F.3d at 1148; Thomas,
20 278 F.3d at 957; Andrews, 53 F.3d at 104. [See AR 60, 62 (state agency medical consultant note stating
21 that based on medical evidence in the record, plaintiff’s “overall affective [symptoms] have remained
22 controlled and stable by meds; [claimant] has been consistent and compliant with [treatment]; positive
23 response to meds; [clean & sober;] given his overall [borderline intellectual functioning]: capable of simple
24 rep[etitive] work; suggest limited public contact; can otherwise interact and adapt accordingly.”); AR 107-
25 110 (adopting the initial state agency mental RFC assessment on reconsideration, and explaining that: (1)
26 plaintiff alleged new anxiety attack symptoms and paranoia but was unsure when those symptoms began;
27 (2) named a treating source for that issue, but that doctor indicated that plaintiff was not his patient; and (3)
28 updated medical evidence in the record indicated “ongoing substance abuse treatment compliance issues,

1 no discussion of anxiety.”)]. The ALJ also pointed to treatment reports from July 2013 through April 2014
2 that buttressed Dr. Lee’s opinion that plaintiff could “function relatively well when sober and compliant,
3 and not so well when he is abusing substances and/or not complying with advice and prescription of treating
4 sources.” [AR 21; see AR 351-378].

5 Plaintiff’s contention that the ALJ improperly disregarded or gave too little weight to Global
6 Assessment of Function (“GAF”) scores lacks merit. “A GAF score is a rough estimate of an individual’s
7 psychological, social, and occupational functioning used to reflect the individual’s need for treatment.”
8 Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir. 2014). “GAF scores, standing alone, do not control
9 determinations of whether a person’s mental impairments rise to the level of a disability,” but “they may be
10 a useful measurement.” Garrison, 759 F.3d at 1003 n.4.

11 As plaintiff notes, Dr. Portnoff gave plaintiff a GAF score of 58, indicating moderate symptoms or
12 moderate difficulty in social, occupational, or school functioning. Dr. Lee, on the other hand, gave plaintiff
13 a GAF score of 65, indicating mild symptoms or mild functional difficulties. The ALJ did not err in failing
14 to mention Dr. Portnoff’s GAF score because he discussed Dr. Portnoff’s narrative opinion, including the
15 moderate mental functional limitations Dr. Portnoff assessed. For the reasons described above, the ALJ
16 permissibly adopted some, but not all, of those limitations, so a separate discussion of the GAF score was
17 not required and would not have been useful. Other providers gave plaintiff GAF scores between 50 and
18 60, with one assigning a GAF score of 48. As plaintiff notes, however, those “GAF scores were not
19 accompanied by an analysis” or by any medical opinion regarding plaintiff’s ability to work, so the ALJ did
20 not err in failing to discuss those scores. [JS 6-8; see AR 254, 271, 290, 353, 362, 366, 368, 370].

21 For all of these reasons, the ALJ did not err in evaluating the medical opinion evidence.

22 **Plaintiff’s subjective testimony**

23 Plaintiff contends that the ALJ erred in evaluating the credibility of his subjective symptoms. [JS
24 3].

25 Once a disability claimant produces evidence of an underlying physical or mental impairment that
26 could reasonably be expected to produce the pain or other subjective symptoms alleged, the adjudicator is
27 required to consider all subjective testimony as to the severity of the symptoms. Moisa v. Barnhart, 367 F.3d
28 882, 885 (9th Cir. 2004); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also C.F.R.

1 §§ 404.1529(a), 416.929(a) (explaining how pain and other symptoms are evaluated). Absent affirmative
2 evidence of malingering, the ALJ must then provide specific, clear and convincing reasons for rejecting a
3 claimant's subjective complaints. Treichler, 775 F.3d at 1102; Vasquez v. Astrue, 547 F.3d 1101, 1105
4 (9th Cir. 2008); Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1160-1161 (9th Cir. 2008). "In
5 reaching a credibility determination, an ALJ may weigh inconsistencies between the claimant's testimony
6 and his or her conduct, daily activities, and work record, among other factors." Bray v. Comm'r of Soc. Sec.
7 Admin., 554 F.3d 1219, 1221, 1227 (9th Cir. 2009) (enumerating factors that bear on the credibility of
8 subjective complaints); Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir. 1989) (same). The ALJ's credibility
9 findings "must be sufficiently specific to allow a reviewing court to conclude that the ALJ rejected the
10 claimant's testimony on permissible grounds and did not arbitrarily discredit the claimant's testimony."
11 Moisa, 367 F.3d at 885. However, if the ALJ's assessment of the claimant's testimony is reasonable and is
12 supported by substantial evidence, it is not the court's role to "second-guess" it. Rollins v. Massanari, 261
13 F.3d 853, 857 (9th Cir. 2001).

14 The ALJ partially credited plaintiff's subjective allegations about his depression, anxiety, and social
15 difficulties by restricting him to simple, routine tasks with occasional contact with the public and
16 coworkers.² The ALJ reasonably rejected the alleged severity of plaintiff's subjective testimony that he
17 had disabling depression and anxiety, did not have friends or family who wanted to spend time with him,
18 disliked people, had problems with neighbors, was paranoid, and avoided crowds. [See AR 17]. The ALJ
19 cited testimony and documentary evidence that plaintiff lived with his girlfriend of ten years and their
20 daughter; had an intact relationship with his father; was able to live in a sober-living facility for two years,
21 where he attended all required group meetings and successfully completed a rehabilitation program; and
22 performed a range of daily activities, which included obtaining a low-income apartment and other public
23 benefits for himself and his family; obtaining a bus pass and using public transportation alone; attending
24 group meetings and therapy after completion of his residential program; caring for his personal needs, albeit
25 with the need for reminders at times; preparing simple meals; performing some household chores; watching
26 television; grocery shopping two or three times a week; handling bills and bank accounts; and going for

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28 ² Plaintiff does not dispute the ALJ's summary of plaintiff's subjective testimony. [See JS 2;
AR 17].

1 walks. [See AR 17-22]. Even though those activities may not be transferrable to a work setting, the ALJ
2 reasonably concluded that they undermine the allegedly incapacitating severity of plaintiff's subjective
3 mental symptoms. See Molina v. Astrue, 674 F.3d 1104, 1112-1113 (9th Cir. 2012) (stating that even when
4 a claimant's daily activities "suggest some difficulty functioning, they may be grounds for discrediting the
5 claimant's testimony to the extent that they contradict claims of a totally debilitating impairment").

6 In addition, the ALJ remarked that no treating source opined that plaintiff was disabled or assessed
7 functional limitations, while Dr. Lee and the state agency medical consultants opined that plaintiff could
8 work. See Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997) (stating that the ALJ may consider
9 information from physicians regarding the nature and effect of a claimant's symptoms). The ALJ also was
10 entitled to consider Dr. Lee's opinion and plaintiff's treatment records indicating that plaintiff's sobriety and
11 medication compliance greatly affected the severity of plaintiff's subjective symptoms. Treatment reports
12 indicated that plaintiff was stable and functioning with minimal symptoms when sober and compliant, and
13 that going off his medications caused an exacerbation of symptoms. [See AR 20-21, 351-378].

14 The ALJ also was entitled to rely in part on inconsistent statements plaintiff made about the nature
15 and extent of his alcohol and drug use. The ALJ pointed to several such statements, not merely one as
16 plaintiff contends. [See AR 21-22]. The fact that plaintiff may have fully disclosed his substance abuse
17 history in some situations does not obviate the significance of inconsistencies, which undermine plaintiff's
18 reliability overall. See Thomas, 278 F.3d at 958 (holding that the ALJ's finding that plaintiff had not "been
19 a reliable historian, presenting conflicting information about her drug and alcohol usage" was a specific,
20 clear, and convincing reason for his negative credibility determination where the claimant denied any
21 substance abuse to one provider and admitted substance use to others, but with conflicting details);
22 Verduzco, 188 F.3d at 1089 (holding that the ALJ properly discounted the claimant's testimony in part
23 because "[his] testimony and various statements regarding his drinking were not consistent"); see generally
24 Molina, 674 F.3d at 1112-1113 (stating that the ALJ may use "ordinary techniques of credibility evaluation"
25 and may consider "inconsistencies . . . in the claimant's testimony").

26 The ALJ articulated clear and convincing reasons, supported by substantial evidence in the record,
27 for his partial rejection of plaintiff's subjective complaints.

28 **Lay witness testimony**

1 Plaintiff contends that the ALJ did not adequately support his decision to give little weight to the
2 third-party function report prepared by Heather Hopmans, plaintiff's live-in girlfriend and the mother of one
3 of his children. [AR 208-216].

4 "[F]riends and family members in a position to observe a claimant's symptoms and daily activities
5 are competent to testify as to [the claimant's] condition." Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir.1993)
6 (holding that the ALJ erred in disregarding descriptions of the claimant's symptoms and functioning from
7 lay witnesses who "clearly saw [the claimant] on a frequent basis"). While an ALJ must take into account
8 competent lay testimony about a claimant's symptoms and functional impairments, the ALJ may discount
9 that testimony by providing "reasons that are germane to each witness." Greger v. Barnhart, 464 F.3d 968,
10 972 (9th Cir. 2006)(quoting Dodrill, 12 F.3d at 919). Germane reasons for rejecting a lay witness's
11 testimony include inconsistencies between that testimony and the claimant's presentation to treating
12 physicians or the claimant's activities, and the claimant's failure to participate in prescribed treatment. See
13 Carmickle, 533 F.3d at 1164; Greger, 464 F.3d at 971; Bayliss, 427 F.3d at 1218. However, ALJs must "tie
14 the reasoning of their credibility determinations to the particular witnesses whose testimony they reject."
15 Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009).

16 The ALJ said that he gave "little weight" to Ms. Hopmans's lay testimony because her status as his
17 live-in girlfriend and the mother of his child gave her a financial interest in helping plaintiff obtain benefits,
18 and because her statements "essentially are the same" as plaintiff's subjective allegations, which the ALJ
19 discredited. [AR 19].

20 The ALJ erred in rejecting Ms. Hopmans's lay testimony because she was plaintiff's girlfriend and
21 lived with him. "[T]he fact that a lay witness is a family member cannot be a ground for rejecting his or her
22 testimony. To the contrary, testimony from lay witnesses who see the claimant everyday is of particular
23 value; such lay witnesses will often be family members." Regennitter, 166 F.3d at 1298 (brackets and
24 ellipsis omitted). Additionally, a claimant's financial motivation for obtaining benefits is not a valid reason
25 for discrediting the testimony of the claimant or the claimant's family members. See Ratto v. Sec'y, Dep't
26 of Health & Human Servs., 839 F. Supp. 1415, 1428-1429 (D. Or. 1993) ("By definition, every claimant
27 who applies for [disability] benefits does so with the knowledge—and intent—of pecuniary gain. That is
28 the very purpose of applying for [disability] benefits. . . . If the desire or expectation of obtaining benefits

1 were by itself sufficient to discredit a claimant's testimony, then no claimant (or their spouse, or friends, or
2 family) would ever be found credible.”).

3 The ALJ’s error was harmless, however, because he articulated a second, germane reason for not
4 finding Ms. Hopmans’ fully credible, namely, the similarity between her statements in the function report
5 and plaintiff’s subjective allegations. See Burch, 400 F.3d at 679 (“A decision of the ALJ will not be
6 reversed for errors that are harmless.”).

7 The statements made by plaintiff’s girlfriend in her function report were similar to plaintiff’s
8 description of his subjective symptoms. Plaintiff was living in the sober-living facility at the time the
9 reports were completed. [AR 208, 216]. Ms. Hopmans said that she saw plaintiff daily for meals and for
10 walks. [AR 208]. Both Ms. Hopmans and plaintiff said that he exhibits a lot of anxiety and a sense of
11 impending doom. [AR 209, 214, 222]. Ms. Hopmans said that plaintiff “loses patience quickly” while
12 preparing a meal, while plaintiff wrote he “just gets frustrated” when he makes food for himself. [AR 210,
13 218]. Ms. Hopmans described plaintiff as “often irritable and very impatient” when dealing with other
14 people. [AR 213]. She asserted that plaintiff “needs things to be explained in detail, more than once. [He]
15 can’t concentrate easily, is impatient with most people.” [AR 213]. She added that he had past problems
16 getting along with coworkers and had trouble handling stress. [AR 214]. Plaintiff said that he did not “like
17 people and they make me paranoid. . . . I can’t always get along with others” [AR 221]. He also said
18 that he did not handle stress well. [AR 222]. Ms. Hopmans and plaintiff described his activities of daily
19 living as including attending group meetings, counseling, and appointments; going on walks; making meals
20 a few days a week; washing dishes; going outside daily; food shopping one to three times weekly; paying
21 bills, using a check book, and handling a bank account; watching television daily; and spending time with
22 others on a daily basis talking and smoking cigarettes. [AR 208-223].

23 In limiting plaintiff to simple, routine work with only occasional contact with the public and
24 coworkers, the ALJ gave some weight to the testimony from plaintiff and his girlfriend regarding his
25 difficulty in social functioning and his problems with impatience, frustration, and difficulty understanding,
26 concentrating on, and completing tasks. As the ALJ noted, however, plaintiff’s subjective complaints of
27 disabling social difficulties was undermined by his ability to live in a dual-diagnosis sober-living facility
28 for two years, successfully complete that residential program, and attend twelve-step group meetings and

1 therapy during and after completing that two-year program. Plaintiff's ability to perform a variety of daily
2 activities, the absence from the record of any treating source disability opinion, and the opinions of Dr. Lee
3 and the state agency medical consultants, including the evidence on which they relied, all tended to
4 undermine the credibility of the testimony from plaintiff and Ms. Hopmans.

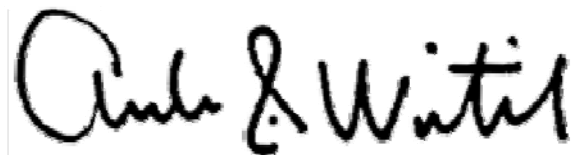
5 Since the ALJ articulated a germane reason for not fully crediting plaintiff's girlfriend's lay witness
6 testimony, any error resulting from his reliance on a second, defective reason was harmless.

7 **Conclusion**

8 For the reasons stated above, the Commissioner's decision is based on substantial evidence and is
9 free of reversible legal error. Accordingly, the Commissioner's decision is **affirmed**.

10 **IT IS SO ORDERED.**

11
12 May 5, 2017

A handwritten signature in black ink, reading "Andrew J. Wistrich". The signature is written in a cursive, flowing style. The first name "Andrew" is written with a large, looped 'A'. The middle initial "J." is written with a small, looped 'J' followed by a period. The last name "Wistrich" is written with a large, looped 'W' and a trailing flourish.

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15 ANDREW J. WISTRICH
United States Magistrate Judge
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